

**KING'S WALK CONDOMINIUM
ASSOCIATION,**

Petitioner,

V.

COMMONWEALTH EDISON COMPANY,

Respondent.

Complaint as to refund the balance of
overcharges/overpayments for electricity in
Rolling Meadows, Illinois

[illegible]

ICC Docket No. 08-0264

INITIAL BRIEF
OF
KING'S WALK CONDOMINIUM ASSOCIATION

Kenneth G. Goldin, Esq.
GOLDIN HILL & ASSOCIATES, P.C.
9100 Plainfield Road
Brookfield, Illinois 60513
Telephone: (708) 485-8300
Facsimile: (708) 485-8301
E-mail: kgoldin@ghlaw.net

Grant O. Jaskulski, Esq.
LAW OFFICE OF MICHAEL A. MUNSON
22 West Washington Street, Suite 1500
Chicago, Illinois 60602
Telephone: (312) 854-8090
Facsimile: (312) 873-4154
E-mail: grant@michaelmunson.com

Date: November 27, 2012

TABLE OF CONTENTS

| | | |
|-------------|--|-----------|
| I. | INTRODUCTION..... | 1 |
| II. | STATEMENT OF FACTS..... | 2 |
| III. | ARGUMENT | 4 |
| | A. ComEd Continually and Improperly Switched King’s Walk’s Accounts into Inapplicable and Improper Commercial Rates and Thereafter Misapplied This Incorrect Tariff | 5 |
| | B. ComEd Improperly Calculated the Rider CABA Credits Owed to King’s Walk and Therefore Owes King’s Walk Additional Refunds | 11 |
| | C. ComEd Excessively Charged King’s Walk by Metering the Single Entity Through Several Separate Accounts | 14 |
| IV. | CONCLUSION | 16 |

I. INTRODUCTION

This matter arises from a long history of pervasive overcharges for electric service by Commonwealth Edison Company (“ComEd”). In 2005, King’s Walk Condominium Association (“King’s Walk”) discovered the numerous and various errors that ComEd had made, which resulted in several excessive charges. In turn, King’s Walk filed a complaint with the Illinois Commerce Commission (the “Commission”). This process ultimately culminated in an Evidentiary Hearing at the Commission on October 3, 2012.

Since January 2007, ComEd has unilaterally and inexplicably made erroneous adjustments to King’s Walk’s accounts resulting in excessive charges. King’s Walk had also complained of additional overcharges prior to 2007, but these allegations were summarily dismissed by the Commission on March 5, 2012, due to the Commission’s application of the limitations period found in Section 9-252 of the Public Utilities Act (the “Act”), *see* 220 ILCS 5/9-252 (2010), as opposed to Section 9-252.1, which King’s Walk argued should apply, *see* 220 ILCS 5/9-252.1 (2010). Nevertheless, even on the remaining allegations alone, multiple and voluminous rate misapplications and overcharges billed to King’s Walk’s accounts not only created an additional level of complexity to this proceeding, but are also unjust and unreasonable, and therefore in violation of the Act’s prohibition on such rates. *See* 220 ILCS 5-9-101 (2010) (prohibiting and declaring unlawful all unjust or unreasonable charges).

Central to King’s Walk’s arguments against ComEd is the mandate of Section 103.1 of the Act, *see* 220 ILCS 5/16-103.1 (2010), which requires that ComEd provide tariffed service to residential “all-electric” condominium customers “at rates that do not exceed on average the rates offered to residential customers.” *Id.* As incontrovertibly demonstrated through its filings, at trial, and by ComEd’s own bills, not only did ComEd switch King’s Walk to incorrect and

higher commercial tariffs after January 2, 2007, but ComEd also incorrectly applied the rates provided in these incorrect tariffs.

Despite the complexity of the issues in this controversy, as both parties have acknowledged, (*see* Trial Transcript (Oct. 3, 2012) at 64:21-65:9, 68:3-6), the trial focused on three core factual matters, namely: (1) that ComEd continually over billed and misapplied its own tariffs; (2) that ComEd improperly calculated King's Walk's credits under the Common Area Billing Adjustment Rider ("Rider CABA"); and (3) that ComEd excessively charged King's Walk for customer charges and other fees through its refusal to properly bill King's Walk under a single account.

II. STATEMENT OF FACTS

King's Walk is a large multi-family complex located in Rolling Meadows, Illinois, consisting of 216 residential units in eleven total buildings. (Trial Transcript at 71:14-18.) Its sole source of heat is through electric heaters or "space heat," deeming it an "all-electric" customer to ComEd. (*Id.* at 71:21; Summary Judgment Order (March 6, 2012) at 1.) Since its initial construction in 1975, ComEd had billed the common areas of King's Walk under Rate 14, which also applied to all 216 individual residential electric space heating customers. (Interim Order (July 7, 2011) at 2.) However, that ended on November 14, 1996, when ComEd switched six of King's Walk's seven accounts from the residential Rate 14 to the general service Rate 6, which should only apply to ComEd's commercial customers. (*Id.*)

ComEd has been billing King's Walk, despite it being a single entity located in a single, contiguous complex, under seven separate accounts since its initial construction. (Trial Transcript at 73:4-5.) Since 2005, King's Walk has contacted ComEd through numerous phone calls and letters to have these accounts consolidated. (*Id.* at 78:2-4.) The requests were in vain,

and King's Walk continued to be billed under seven separate accounts, incurring redundant and excessive charges within all seven bills. (*Id.* at 78:19-21.)

King's Walk continued to attempt to resolve this matter without turning to the Commission, and, indeed, in 2006, ComEd acknowledged in writing that it had billed King's Walk under the wrong tariff. (*See* Amended Formal Complaint, Ex. F.) ComEd refunded more than \$33,000, purportedly representing the period of January 22, 2005, to July 20, 2006. (*Id.*) However, despite its own admissions of incorrect billing and reversing the wrong rate back to the correct rate, ComEd failed to refund any additional money, and about six months later, began improperly billing King's Walk again on the same wrong rate for the next 72 months. (Trial Transcript at 79:18-22.)

On April 13, 2007, King's Walk sent an Informal Complaint to the Commission asking for the balance of its refund for the remaining overpayments made to ComEd. (*See* Amended Formal Complaint, Ex. E.) On April 11, 2008, King's Walk filed its Original Formal Complaint, (Interim Order at 1 n.1), and after some initial proceedings, King's Walk filed its Amended Formal Complaint on February 23, 2009. (*See, generally*, Amended Formal Complaint (Feb. 23, 2009).) This Complaint asserted, among other things, that:

- (1) On November 14, 1996, ComEd improperly and without notice switched six of seven of King's Walk's electric accounts from the correct utility rate (i.e., Rate 14) to a higher, inapplicable, and incorrect rate (i.e., Rate 6) and made continuing billing errors and mismeasurements of service following these unauthorized switches;
- (2) On January 2, 2007, ComEd improperly switched two of King's Walk's accounts to an incorrect Commercial Blended without Space Heating rate and a few months later improperly switched the five other accounts to yet another incorrect rate classification of Commercial Blended with Space Heating;
- (3) ComEd failed to duly issue King's Walk credits under the Common Area Billing Adjustment Rider ("Rider CABA"); and

- (4) ComEd continued to improperly bill King's Walk under seven separate accounts, thereby incorrectly charging King's Walk for excessive meter rental and customer charges.

(*See id.*)

ComEd moved to dismiss the Amended Formal Complaint on limitations grounds, and, on July 27, 2011, the Commission entered an Interim Order ruling that, although the Commission cannot rule on King's Walk's allegations occurring before April 11, 2006, it has proper jurisdiction over the allegations that arose after that date. (*See* Interim Order at 16.) These remaining allegations are the four issues previously mentioned from the Amended Formal Complaint. (*See id.*) In response to the Interim Order, King's Walk timely filed a Petition for Rehearing and Reconsideration with the Commission, and plans to further appeal the findings of the Interim Order to the Illinois Court of Appeals. (*See, generally*, Petition for Rehearing and Reconsideration (Aug. 11, 2011).)

An Evidentiary Hearing to reach a determination on these remaining issues was held at the Commission on October 3, 2012. Testifying on behalf of King's Walk were: Deborah Habeck, President of King's Walk, (*see* Trial Transcript at 70-92); Jeremy Quattrochi, Property Manager at Stellar Properties, (*see id.* at 93-111); and Charles Prettyman, former Senior Account Executive at ComEd, (*see id.* at 123-211). ComEd presented two witnesses at the Hearing: David Geraghty, Manager of the Electric Supplier Services Department at ComEd, (*see id.* at 212-267); and John Leick, Senior Rate Administrator at ComEd, (*see id.* at 268-316).

III. ARGUMENT

ComEd's sole argument at trial (i.e., that it is not precluded under Section 16-103.1 of the Act from charging a residential customer with electric space heating under a tariff designated as commercial, so long as that rate does not exceed the rates approved for residential customers with electric space heating) is fatuous in view of the incontrovertible fact that, as plainly evident

in its own bills, ComEd did not charge King's Walk the rate applicable to the residential customer class with electric space heating. Conversely, ComEd continually and incorrectly charged King's Walk the inapplicable and far higher rate that was only applicable to its commercial customers. Additionally, King's Walk has demonstrated that the calculations under Rider CABA, done by ComEd's purported expert, were not based on King's Walk's actual bills, but were actually based on erroneous assumptions as to what King's Walk would have paid for its service if ComEd billed it correctly. Moreover, ComEd's own bills show that, by inexplicably billing King's Walk through seven individual accounts instead of a single one, King's Walk incurred excessive charges that were not billed to similar situated customers.

A. ComEd Continually and Improperly Switched King's Walk's Accounts into Inapplicable and Improper Commercial Rates and Thereafter Misapplied This Incorrect Tariff

Under Section 16-103.1 of the Act, ComEd is required to provide tariffed service to Unit Owners' Associations for condominium properties not restricted to nonresidential use at rates that, on an annual basis, do not exceed the rates offered to residential customers. 220 ILCS 5/16-103.1 (2010). Additionally, the Act required ComEd to reinstate the "all-electric" discount to these Unit Owners' Associations that had received the discount on December 31, 2006. *See id.* It is undisputed that King's Walk was, at all relevant times, a Unit Owners' Association and a condominium property that was not restricted to nonresidential use and was receiving its energy as an "all-electric" space heating customer for the past 37 years. (*See* Trial Transcript at 71:11-21, 132:18-133:12.) It is also undisputed and manifested from ComEd's own bills that, as of December 31, 2006—after being switched from inapplicable commercial rates for more than ten years from 1996 thru 2006—all seven of King's Walk's accounts were taking electric service at the "all-electric" discounted residential space heat rate, Rate 14. (*See* King's Walk Trial Ex. 5.0.) Finally, it is beyond dispute that following the effective date of Section 16-103.1, ComEd

offered the new residential space heat rate to its existing residential electric space heat customers, who number in excess of 100,000, pursuant to its filed tariff Rate BES-R, and that ComEd's basic electric service blended rates (i.e., Rates BES-NRA and BES-NRB), as well as its current blended rate, Rate BES, provide for different, lower rates for the residential space heating customer subgroup than for other nonresidential customer subgroups. (*See King's Walk Trial Exs. 3.0, 4.0.*)

As has been shown by King's Walk throughout these proceedings, despite the mandate of Section 16-103.1, on January 2, 2007:

- (1) King's Walk's account number 4993632012 was switched to an incorrect commercial rate (i.e., Commercial Blended Watt Hour without Space Heat) rather than to the correct residential rate (i.e., Rate BES-R with Space Heating) and thereafter improperly switched to other incorrect commercial rates, either with or without space heating, (*see King's Walk Trial Ex. 5.0*);
- (2) King's Walk's account number 4993693015 was switched to an incorrect commercial rate (i.e., Commercial Blended without Space Heat) and thereafter switched to other incorrect commercial rates, without space heat, (*see id.*);
- (3) King's Walk's other five accounts¹ were initially switched to the correct Residential Space Heating tariff, but within four or five months were improperly and continually switched to incorrect commercial rates, either with or without space heat, (*see id.*); and
- (4) As a result of these improper rate switches, none of which were requested by King's Walk, ComEd charged, and King's Walk paid, supply charges at the higher rate than the supply charge applicable for other residential electric space heating customers, resulting in substantial overcharges, (*see id.*).

ComEd's own witnesses have conceded through their testimony that at least some of King's Walk's accounts were incorrectly billed at a nonresidential rate, (*see Trial Transcript at 306:10-12*) or "inadvertently overlooked," (*see id. at 222:14-18*). Moreover, ComEd has

¹ These accounts numbers are: 4993620018, 4993691011, 4993690014, 4993518017, and 4993517010. (*See King's Walk Trial Ex. 5.0.*)

admitted that King's Walk's accounts did not have a residential rate applied to them and did not receive the residential supply charge mandated under Section 16-103.1. (*See id.* at 260:15-260:18.)

To the extent cognizable, ComEd's sole defense to these irrefutable facts is that the Commission, in Docket No. 05-0597, somehow authorized ComEd to switch its former "all-electric" residential space heating customers to commercial rates under Rate BES-NRA. (*See* ComEd's Motion for Summary Judgment (Dec. 22, 2011) at 3; Trial Transcript at 220:12-222:18.) ComEd does not suggest that this authorization abrogated the requirement of Section 16-103.1 that all former Rate 14 residential space heat customers be provided with service at the lower residential rate. Rather, ComEd suggests that the method for implementing Section 16-103.1 is to put qualifying customers on a commercial rate but to charge them the lower residential space heating supply charge. (*See* Trial Transcript at 221:14-222:11, 298:6-299:1.)

In fact, ComEd's basic electric service rates (i.e., Rates BES-NRA and BES-NRB), although designated as "nonresidential," expressly provide for different supply charges for different customer subgroups. (*See* King's Walk Trial Ex. 4.0.) Fundamentally, the supply charge for the Residential Electric Space Heating Customer Subgroup is substantially lower than the supply charges for other customer subgroups. (*See id.*) As an example, the Summer Supply Charge for a residential customer under Rate BES-NRB is \$.04935, but is \$.07027 for a nonresidential customer—resulting in more than a 42 percent higher charge. (*Id.*) Moreover, these residential customer charges in the "nonresidential" rates are exactly the same as the supply charges under the residential rate, Rate BES-R. (*Compare* King's Walk Trial Ex. 4.0 *with* King's Walk Trial Ex. 5.0.) ComEd witness Leick further testified that King's Walk should properly be

charged under the residential electric space heating subgroup, (*see* Trial Transcript at 301:21-303:1), as did King's Walk witness Prettyman, (*see id.* at 144:14-16).²

Insofar as ComEd's post-January 2, 2007, designated nonresidential tariffs (i.e., Rates BES-NRA and BES-NRB) expressly provide for a supply charge to residential customers that is exactly the same as the supply charge under ComEd's residential tariff (i.e., Rate BES-R), King's Walk agrees in principle that charging King's Walk under a "nonresidential" tariff would not, in and of itself, contravene Section 16-103.1. However, it is inarguable that ComEd did not apply the correct supply charge (i.e., the Residential Electric Space Heating Customer Subgroup Charge) under its nonresidential tariffs. Rather, ComEd charged King's Walk the substantially higher Nonresidential Space Heating Subgroup Supply Charge. ComEd's own bills plainly show that King's Walk was charged this incorrect and higher nonresidential supply charge. Moreover, ComEd's witnesses acknowledged, as they must, that these bills reflected the nonresidential

² ComEd witness Geraghty testified that, except for two accounts which were inadvertently overlooked and not placed on residential rates, the rates applied to King's Walk's accounts were "less than or equal to the residential rates that the customer would have been billed on otherwise." (Trial Transcript at 222:6-11.) But then, in direct contravention of his testimony, Mr. Geraghty testified that King's Walk should have been billed at the higher commercial rate. (*See id.* at 234:7-18, 235:3-9, 238:1-13.) Mr. Geraghty also testified that King's Walk was not eligible to take service under ComEd's residential rate (i.e., Rate BES-R) and that, after January 1, 2007, King's Walk was somehow not a residential customer anymore after 30 years. (*See id.* at 240:18-241:2, 242:7-8.) This conflicting trial testimony is patently incredible and is contradicted not only by ComEd's other witness, (*see id.* at 309:12-310:16), but also by Mr. Geraghty's own sworn statements. (*See* ComEd's Motion for Summary Judgment, Ex. A.) More fundamentally, it is contradicted by the plain language of Section 16-103.1 and ComEd's own tariffs. *See* 220 ILCS 5/16-103.1 (2010). It is also expressly contradicted by the fact that, prior to January 2, 2007, ComEd billed all seven of King's Walk's accounts under its residential electric space heat rate (i.e., Rate 14), (*see* King's Walk Trial Ex. 5.0), by the fact that ComEd continued to charge five of these accounts at a residential rate (i.e., Rate BES-R) following January 2, 2007, (*see id.*), and by the fact that ComEd itself computed Rider CABA credits utilizing residential supply charges for 2006 and 2007, (*see* ComEd Trial Ex. 1.0 Tab 4).

supply charge, not the lower residential supply charge.³ (*See* Trial Transcript at 254:11-257:3, 308:18-310:3.)

ComEd witness Geraghty further testified that, after May 2008, ComEd's Rates BES-NRA and BES-NRB were merged into a single tariff, Rate BES. (*See id.* at 226:18-21.) However, by its express terms, Rate BES continues to provide for different retail customer groups (i.e., the Residential Customer Group, the Demand Customer Group, the Dusk to Dawn Customer Group, etc.). *See* Commonwealth Edison Co., *Schedule of Rates for Electric Svc.*, 19-28 (June 20, 2012). Moreover, Rate BES continues to charge different supply charges for these different customer groups. *See* Commonwealth Edison Co., *Delivery Service Charges Informational Sheet* (October 17, 2012), *available at*: https://www.comed.com/Documents/customer-service/rates-pricing/rates-information/current/Delivery_Service_Charges_InfoSheets.pdf. Most significantly, ComEd's own bills show incontrovertibly that, after May 2008, ComEd did not charge King's Walk this lower Residential Customer Group supply charge. (*See* King's Walk Trial Ex. 5.0.) Rather, ComEd charged King's Walk at the higher Commercial Demand Group. (*See id.*)

As a matter of practice and pursuant to ComEd's own policies, the customer bears responsibility for selecting under which rate it will take service. (*See* Trial Transcript at 242:19-243:17.) The un rebutted testimony of King's Walk's lay witnesses, Mr. Quattrochi and Ms. Habeck, state that King's Walk *never* asked to be placed on commercial rates. (*See id.* at 75:11-17, 100:10-17.) Moreover, it is clear that there is no circumstance where King's Walk would

³ ComEd Witness Geraghty suggests in his testimony that there were bills which ComEd "cancelled" and "rebilled," as if to suggest that ComEd corrected its overbillings. (*See* Trial Transcript at 226:15-228:11.) However, neither Mr. Geraghty nor ComEd could provide any evidence of such "rebills" or "cancellations." Both Mr. Geraghty and Mr. Leick further testified that they did not look at the bills in great detail, (*see id.* at 229:14-230:15), or only "glanced over a few," (*see id.* at 299-15-22).

actually choose to pay more for its electricity. (*See id.* at 77:3-10.) There is no reason that King's Walk should pay more than other similarly situated "all-electric" residential buildings. Notwithstanding its unsupported testimony that ComEd ceased offering the residential space heating rate for "all-electric" multi-unit buildings on January 2, 2007, (*see id.* at 234:7-13.) ComEd provides absolutely no evidence that, in fact, all such other buildings paid the higher commercial supply charge rather than the lower residential supply charge provided in ComEd's tariffs and mandated by Section 16-103.1.

The unrebutted testimony of King's Walk's witnesses shows that, after learning in 2007 that ComEd was overcharging King's Walk at incorrect commercial rates, King's Walk repeatedly requested to be switched to the correct residential rates. (*See id.* at 85:15-18, 99:9-15.) In fact, King's Walk even filed informal and formal complaints with the Commission in a vain attempt to effectuate the switch. (*See id.* at 80:11-18.) However, despite these efforts, ComEd continues to perpetuate its errors. (*See, generally*, Amended Formal Complaint.) Moreover, ComEd offers no explanation as to why—in view of its own admissions that King's Walk was incorrectly charged and that residential space heat supply charges apply to King's Walk—ComEd continues to charge King's Walk with improper and inapplicable nonresidential rates and charges.

Based on ComEd's actual bills in evidence, King's Walk has prepared a workable summary of its bills, which simply totals the actual supply charges paid by King's Walk from and after July 20, 2006, and then subtracts the residential supply charges that King's Walk should have paid for this period. (*See* King's Walk Trial Ex. 5.0.) This shows that King's Walk was overcharged by an estimated \$42,238.95 for its electric supply, not even including interest, resulting in a grossly excessive charge. (*See id.*) ComEd provides no evidence that any of these

overcharges were refunded or credited to King's Walk, and no such evidence exists. Accordingly, because ComEd has excessively charged King's Walk for its products, commodities or services, the Commission should award ComEd to make due reparation to King's Walk in the amount of \$42,238.95 with interest at the legal rate from the several different payment dates, in addition to the other amounts claimed by King's Walk. See 220 ILCS 5/9-252 (2010).

B. ComEd Improperly Calculated the Rider CABA Credits Owed to King's Walk and Therefore Owes King's Walk Additional Refunds

ComEd failed to properly implement the express terms of its own Rider CABA and, in doing so, failed to adjust King's Walk's bills to their appropriate levels. Rider CABA applies to any nonresidential customer that: (1) was eligible to take service on January 1, 2007 under a residential service rate (e.g., Rate 14); and (2) was taking service under certain nonresidential service rates on Rider CABA's initial effective date. (*See* ComEd Trial Ex. 1.0 Tab 1.) As ComEd witness Geraghty explained at trial, it was implemented in an effort to bring a customer using electric space heating for its common areas to a level that would be no more than what that customer would have paid if it had remained on the same residential electric space heat rate. (*See* Trial Transcript at 223:6-11.) Instead of the increase that it would have received in 2007, the customer's annual percent increase for electric service would be reduced under Rider CABA to 24 percent. (*See id*; ComEd Trial Ex. 1.0 Tab 1.)

Neither ComEd nor its witnesses dispute that King's Walk is properly entitled to credits under Rider CABA. (*See, e.g.*, Trial Transcript at 187:21-22, 273:19-22, 279:1-3.) In fact, ComEd had previously issued Rider CABA credits to King's Walk in the amount of \$6,261.92. (*See* ComEd Trial Ex. 1.0 Tab 2; Trial Transcript at 187:21-22.) The dispute with regard to Rider CABA credits arises from two remaining issues: (1) that ComEd failed to issue Rider CABA

credits for two of King's Walk seven accounts; and (2) that ComEd miscalculated the credits properly due King's Walk under Rider CABA. King's Walk is entitled to an additional refund, with interest at the legal rate, in reparations under Rider CABA because ComEd effectively charged an excessive amount, thus violating the terms of its own tariff and the provisions of the Act. *See* 220 ILCS 5/9-252 (2010).

To begin with, King's Walk is due refunds under Rider CABA on two of its seven accounts. On July 20, 2007, ComEd issued refunds to King's Walk, citing a "Common Area-Special Credit" on the bills. (ComEd Trial Ex. 1.0 Tab 3.) However, ComEd only issued these credits for five of King's Walk's seven accounts.⁴ (*See id.*) ComEd has admitted that two of King's Walk's accounts were "overlooked" when the Rider CABA credits were calculated. (Trial Transcript at 273:19-22.) In fact, ComEd was aware of this oversight in December 2011, but has expressly chosen not to apply any of the remaining Rider CABA credits and has offered no reason as to why these accounts did not receive their proper credits under Rider CABA. (*See id.* at 312:1-9.)

While both King's Walk and ComEd agree that these two accounts are still owed credits under Rider CABA, the disparity arises in the calculation of not only these two accounts, but of all seven of King's Walk's accounts. The formula used to calculate the Rider CABA credits, which ComEd witness Leick explained was the same as was originally applied, was based on incorrect assumptions. (*See id.* at 305:7-12.) Rider CABA credits are calculated as a billing adjustment under the terms of the tariff itself. (*See* ComEd Trial Ex. 1.0 Tab 1.) These billing adjustments are the difference between: (1) the revenue received by ComEd in 2007; and (2) the

⁴ ComEd issued credits for King's Walk's accounts with the following accounts numbers: 4993692018, 4993691011, 4993517010, 4993518017, and 4993232012. (*See* ComEd Trial Ex. 1.0 Tab 2). ComEd *did not* issue credits for King's Walk's accounts with the following numbers: 4993690014 and 4993693015. (*See id.*)

revenue received by ComEd in 2006, multiplied by 1.24. (*See id.*) In other words, the credits under Rider CABA are determined by the following formula:

$$\text{Billing Adjustment} = 2007 \text{ Revenue} - (2006 \text{ Revenue} \times 1.24)$$

(*Id.*) In this formula, the 2006 revenue is a historical amount, based on the actual bills that ComEd issued to that customer for that time period. (*See id.*) The 2007 revenue is calculated as an expected amount because, at the time Rider CABA became effective, the revenue for 2007 was unknown. (*See id.*)

When ComEd calculated the Rider CABA credits for King's Walk, it did so under three assumptions: (1) that the accounts were billed on Rate 14 in 2006; (2) that the accounts would have been eligible to bill with the Residential Electric Space Heating Supply Charges beginning with the July 2007 monthly bill; and (3) that the January 2007 bills with the incorrect residential rates were not revised.⁵ (ComEd Trial Ex. 1.0 Tab 4.) However, these assumptions were not based on the facts, and ComEd erroneously failed to apply the correct residential space heating supply charges for the 2007 revenue. (*See* Trial Transcript at 315:9-12.) In fact, due to ComEd's misapplication of its tariffs, King's Walk's accounts were on residential rates for only part of 2006, and were on higher commercial rates for some or all of 2007. (*See* King's Walk Trial Ex. 5.0.) Because of these errors, ComEd's assumptions in calculating King's Walk's credits under Rider CABA were wrong from *both* 2006 and 2007. (*See id.*)

ComEd witness Leick testified that King's Walk is due an adjustment because of this oversight. (*Id.*) Because this same methodology was used for all of King's Walk's accounts—including the accounts that received Rider CABA credits in 2007—all of ComEd's calculations

⁵ These assumptions were listed in ComEd's calculations for the two outstanding accounts. However, as explained by ComEd witness Leick, the methodology used for these two accounts that were originally overlooked is identical to the formula used in 2007 for all eligible accounts. (*See* Trial Transcript at 276:6-10.)

under Rider CABA for all of King's Walk's accounts are incorrect and should be disregarded by the Commission. Because of ComEd's failure to properly apply the correct supply charges for the revenue from King's Walk in 2007, ComEd effectively charged a greater amount than what was permitted under its published rate in effect at the time, in direct violation of the Act. *See* 220 ILCS 5/9-240 (2010). The Act prohibits ComEd from charging, demanding, collecting, or receiving greater compensation for its products, commodities, or services than what is allowed under its rates on file and in effect at the time. *Id.* Because ComEd improperly gave King's Walk Rider CABA credits that were lower than what King's Walk should have received under the published rate, ComEd violated the Act's prohibition on charging anything different than the published rates. Correspondingly, King's Walk presented at trial Rider CABA calculations based on the actual amounts paid by King's Walk. (*See* King's Walk Ex. 2.0.) These calculations show that, even after applying the Rider CABA credits that ComEd actually applied to King's Walk's accounts, ComEd still owes King's Walk an estimated \$5,053.89 for the outstanding credits under Rider CABA. Therefore, the Commission should order ComEd to make due reparations to King's Walk for \$5,053.89 from the date that the Rider CABA credit should have been issued in 2007, plus interest at the legal rate. *See* 220 ILCS 5/9-252 (2010).

C. ComEd Excessively Charged King's Walk by Metering the Single Entity Through Several Separate Accounts

King's Walk has paid and continues to pay an excessive amount to ComEd by paying through seven separate accounts. Despite never requesting to be billed separately and repeatedly requesting to have its bills combined onto one account, King's Walk has been billed through these seven accounts since its initial construction. (*See* Trial Transcript at 73:1-9.) King's Walk is a single entity, and its separate buildings all have common ownership and management. Additionally, King's Walk's buildings are all located at the same location with contiguous

borders. As ComEd witness Geraghty explained, this is in congruence with the prerequisites necessary to have combined billing. (*See id.* at 248:3-11.) Moreover, it is a standard and long-time ComEd policy dating back to the 1960s for a residential condominium complex, even one with multiple buildings, to be billed under a single account. (*See id.* at 96:16-18.)

Through several phone calls and letters beginning in 2005, King's Walk asked to have their seven separate accounts consolidated into a single one. (*See id.* at 78:2-10.) The bills were never consolidated, and ComEd did not explain why King's Walk's repeated requests were ignored. (*See id.* at 78:19-21.) Further, ComEd's own witness explained that this type of separate billing was contrary to ComEd's policies, (*see id.* at 248:3-5), and King's Walk's professional property manager also testified that, although he had managed about 25 similar residential condominium associations, he had never seen a comparable complex billed under multiple electric accounts, (*see id.* at 96:13-19). The only proffered reason that ComEd did not comply with King's Walk's request to combine its seven accounts was because this litigation had already begun. (*See* Trial Transcript at 312:4-9.) However, for two years *before* this litigation began (i.e., 2005 to 2007), ComEd ignored King's Walk's request to combine its seven accounts. ComEd presented no evidence that this combined billing was somehow inapplicable or any reason it did not comply with King's Walk's repeated requests to combine its bills.

Being billed under seven different accounts does not simply create a monthly administrative inconvenience; the separate bills each have certain fixed common charges, per account. For instance, each bill to each of King's Walk's seven accounts receives a fixed Customer Charge, and each bill to each of King's Walk's seven accounts receives a fixed Standard Metering Charge. Because King's Walk was erroneously receiving seven separate bills instead of one, it was paying *seven times* the amount for these charges. Although ComEd's

witnesses feebly attempted to justify why a single customer may wish to receive multiple bills, (*see id.* at 250:6-18), ComEd could not explain why King's Walk's was receiving seven separate bills or continued to receive such bills after repeatedly requesting that the accounts be consolidated into an appropriate single account.

Despite King's Walk's qualifications, despite King's Walk's repeated requests, and despite how ComEd treats similarly situated condominium associations, King's Walk has been improperly billed on seven separate accounts. As a result, ComEd subjected King's Walk to a disadvantage, *see* 220 ILCS 5/9-241 (2010), and excessively charged King's Walk for its product, commodity, or service, *see* 220 ILCS 5/9-252 (2010). These violations of the Act require ComEd to make due reparations to King's Walk, with interest at the legal rate from the date of payment of such excessive or unjustly discriminatory amount. *Id.* The Commission should order that ComEd adjust King's Walk's bills to reflect consolidated billings from April 11, 2006.⁶ Further, King's Walk provided evidence that the excessive charges resulting from the multiple accounts estimated at \$6,137.69, (*see* King's Walk Trial Exs. 2.0, 5.0), which represents the difference between the amounts actually paid by King's Walk and the amounts it should have paid if it was properly billed under a single account. Therefore, the Commission should order that ComEd make due reparations for King's Walk in the amount of \$6,137.69 plus interest at the legal rate from the numerous payment dates. *See* 220 ILCS 5/9-252 (2010)

IV. CONCLUSION

As stated at trial, King's Walk submits that, in light of the inalterable facts on ComEd's own erroneous bills, ComEd's insistence on subjecting its customer to the vast expense of bringing its claims to trial is both unnecessary and an egregious abuse of ComEd's mandate as a

⁶ April 11, 2006, is the date when the Commission's jurisdiction over these claims begins. (*See* Interim Order at 16.)

public utility. King's Walk proved at trial every element of its causes of action, and ComEd's sole defense (i.e., that the Commission gave ComEd mandate to overcharge its residential "all-electric" space heating customers at inapplicable commercial rates) is belied not only by Section 16-103.1, but by the testimony of its own expert witnesses.

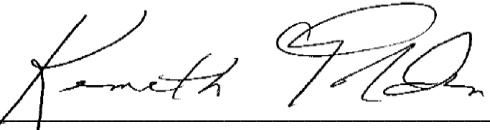
For the above reasons, the Commission should award King's Walk due reparations for the errors in billings and resulting excessive charges levied on King's Walk. These reparations have been estimated in the principal amounts of:

- (1) \$42,238.95 for improperly charging King's Walk under inapplicable commercial rates, in contravention of Section 16.103.1;
- (2) \$5,053.89 for outstanding credits under Rider CABA still due King's Walk; and
- (3) \$6,137.69 for excessive and redundant charges resulting from improperly billing King's Walk through seven separate accounts.

In total, ComEd must make due reparation to King's Walk in the principal amount of \$53,430.53, plus interest at the legal rate from the date of King's Walk excessive payments. This interest is estimated at \$8,583.64. Therefore, the Commission should order that ComEd make due reparations to King's Walk of \$62,014.17, together with such other relief as the Commission deems just.

Respectfully submitted,

KING'S WALK CONDOMINIUM ASSOCIATION

By: _____

Kenneth G. Goldin, Esq.

Attorney for King's Walk Condominium Association

GOLDIN HILL & ASSOCIATES, P.C

9100 Plainfield Road

Brookfield, Illinois 60513

Telephone: (708) 485-8300

Facsimile: (708) 485-8301

E-mail: kgoldin@ghlaw.net

Grant O. Jaskulski, Esq.

LAW OFFICE OF MICHAEL A. MUNSON

22 West Washington Street, Suite 1500

Chicago, Illinois 60602

Telephone: (312) 854-8090

Facsimile: (312) 873-4154

E-mail: grant@michaelmunson.com

November 27, 2012

**KING'S WALK CONDOMINIUM
ASSOCIATION,**

Petitioner,

V.

COMMONWEALTH EDISON COMPANY,

Respondent.

Complaint as to refund the balance of
overcharges/overpayments for electricity in
Rolling Meadows, Illinois

[illegible]

ICC Docket No. 08-0264

NOTICE OF FILING

PLEASE TAKE NOTICE that on November 27, 2012, King's Walk Condominium Association caused to be filed the INITIAL BRIEF in the above-captioned proceeding with Elizabeth A. Rolando, Chief Clerk of the Illinois Commerce Commission, via e-Docket.

By:

Grant O. Jaskulski, Esq.
LAW OFFICE OF MICHAEL A. MUNSON
22 West Washington Street, Suite 1500
Chicago, Illinois 60602
Telephone: (312) 854-8090
Facsimile: (312) 873-4154
E-mail: grant@michaelmunson.com

**KING'S WALK CONDOMINIUM
ASSOCIATION,**

Petitioner,

V.

COMMONWEALTH EDISON COMPANY,

Respondent.

Complaint as to refund the balance of
overcharges/overpayments for electricity in
Rolling Meadows, Illinois

[illegible]

ICC Docket No. 08-0264

CERTIFICATE OF SERVICE

I, Grant O. Jaskulski, hereby certify that a copy of the foregoing INITIAL BRIEF was served on the persons on the attached Service List by depositing same in United States mail, proper postage prepaid at 22 West Washington Street, Chicago, Illinois, or by electronic mail on November 27, 2012.

By:

Grant O. Jaskulski, Esq.
LAW OFFICE OF MICHAEL A. MUNSON
22 West Washington Street, Suite 1500
Chicago, Illinois 60602
Telephone: (312) 854-8090
Facsimile: (312) 873-4154
E-mail: grant@michaelmunson.com

ILLINOIS COMMERCE COMMISSION

DOCKET NO. 08-0264

SERVICE LIST

Alexis G. Chardon
Atty. for Commonwealth Edison Company
EIMER STAHL LLP
224 S. Michigan Ave., Ste. 1100
Chicago, IL 60604
achardon@eimerstahl.com

Claudia Sainsot
Administrative Law Judge
ILLINOIS COMMERCE COMMISSION
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601-3104
csainsot@icc.illinois.gov

Kenneth G. Goldin
Atty. for King's Walk Condominium Ass'n
GOLDIN HILL & ASSOCIATES, P.C.
9100 Plainfield Rd.
Brookfield, IL 60513
kgoldin@ghlaw.net

Scott Solberg
Atty. for Commonwealth Edison Company
EIMER STAHL LLP
224 S. Michigan Ave., Ste. 1100
Chicago, IL 60604
ssolberg@eimerstahl.com

Deborah A. Habeck
President
KING'S WALK CONDOMINIUM ASSOCIATION
50 E. Commerce Dr., #10
Schaumburg, IL 60173

Jonathan M. Wier
Atty. for Commonwealth Edison Company
EIMER STAHL LLP
224 S. Michigan Ave., Ste. 1100
Chicago, IL 60604
jwier@eimerstahl.com

Grant O. Jaskulski
Atty. for King's Walk Condominium Ass'n
LAW OFFICE OF MICHAEL A. MUNSON
22 W. Washington St., Ste. 1500
Chicago, IL 60602
grant@michaelmunson.com

Thomas S. O'Neill
Sr. Vice President & General Counsel
COMMONWEALTH EDISON COMPANY
440 S. LaSalle St., Ste. 3300
Chicago, IL 60605
thomas.oneill@comed.com

Bradley R. Perkins
EXELON BUSINESS SERVICES COMPANY
10 S. Dearborn St., 49th Fl.
Chicago, IL 60603
brad.perkins@exeloncorp.com